

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X

**NINO MARTINENKO, on behalf of
herself and others similarly situated,**

CASE NO. 22 CV 518 (LJL)

Plaintiff,

v.

**212 STEAKHOUSE, INC., and
NIKOLAY VOLPER,**

Defendants.

-----X

DECLARATION OF NINO MARTINENKO

I, Nino Martinenko, under penalty of perjury, affirm as follows:

1. I am the Named Plaintiff in this action. I am familiar with the facts and circumstances set forth herein.
2. I submit this declaration in support of Plaintiff's motion for sanctions pursuant to Fed. R. Civ. P. 37.
3. I worked at 212 Steakhouse (the "Restaurant") as a server from 2015 through 2018, and then again from early 2021 through December 2021.
4. During my entire time working at the Restaurant, the Restaurant maintained daily and weekly tip sheets that showed the amount of tips that each front of house employee (servers, runners, bussers, and bartenders) received.
5. Attached as Exhibit 1 are examples of the daily tip sheets that were used at the Restaurant. The daily tip sheets in this Exhibit are from March 20, 2021; and June 11, 2021. I understand that these were produced by the Defendants in this lawsuit.
6. The daily tips sheets were filled out by a senior server who worked that day and reflect

each listed employee's share of credit card tips.

7. A man named Imran Sajid created the template for the daily and weekly tip sheets and saved these templates on the computer in the Restaurant's office. Mr. Sajid did not have a formal title at the Restaurant. However, among other things he assisted with the payroll process.
8. Attached as Exhibit 2 are true and correct copies of examples of the weekly tip sheets that were used at the Restaurant. The weekly tip sheets in this Exhibit are from May 6-12, 2017; December 18-24, 2017; May 22-28, 2021; and November 22-28, 2021. I only have copies of a few weekly tip sheets from the Restaurant.
9. A senior server filled out the weekly tip sheets by hand using the daily tip sheets. Sometimes I filled out the weekly tip sheets.
10. The weekly tips sheets were used to add up each front of house employee's weekly tips, which were paid to us in our paychecks.
11. The filled out weekly tip sheets were stored in the Restaurant's office in either the main drawer of the desk or in a binder with other weekly tip sheets.
12. I never saw anyone throw out the Restaurant's daily or weekly tip sheets or remove them from the office.
13. The Restaurant paid employees by handwritten checks. Sometimes I wrote out the checks.
14. Attached as Exhibit 3 are true and correct copies of pay stubs for the Restaurant's front of house employees. I received these documents from Mr. Sajid so that I could write out employees' paychecks. The pay stubs in this Exhibit are for the following pay periods: March 22-28, 2021; September 27-October 3, 2021; November 15-21, 2021, November 29-December 5, 2021.

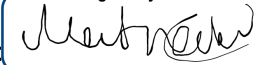
15. During my entire time working at the Restaurant, Defendants asked some employees to sign a sheet when receiving their pay.
16. This confirmation document stated each of the employees' names that worked during that week. A true and correct example of this type of document (the "confirmation sheet") is attached as Exhibit 4. I received this document from Mr. Sajid.
17. Mr. Sajid also prepared a document that listed front of house employees' weekly work hours and tips and back of house employees' weekly hours worked and total pay. True and correct examples of this type of document (the "pay sheet") are attached as Exhibit 5. I received these documents from Mr. Sajid.
18. After employees signed the confirmation sheet, we placed it and the pay sheet in the top drawer of the desk in the Restaurant's office.
19. I never saw anyone throw out any of the signed confirmation sheets or pay sheets or remove them from the office.
20. I have reviewed the list of front of house employees that is attached as Exhibit 4 to the October 31, 2022 declaration of Denise A. Schulman.
21. I recall working with the following front of house employees who are not included in that list during my first period of employment: servers Mariken, Alina, Kelsey Foley, and Stefana; bussers Tristan Collazo and Luis Quizphi; runners Noel and Miguel; and bartenders Cinzia Bonferraro, Nadia, and Danny. Merikin, Kelsey Foely, Stefena, Tristan Collazo, Luis Quizphi, Noel, and Miguel are included in the weekly tip sheets submitted with this declaration. *See* Ex. 2, p.1-2. To the best of my recollection, I worked with all of them between 2016 and 2018. I believe I worked with additional front of house employees during that time period whose names I do not currently recall.

22. I recall working with the following front of house employees who are not included in that list during 2021: Damian, Gian Carlos, and Ilya. These individuals are included in the daily and/or weekly tip sheets submitted with this declaration. *See* Ex. 1, p. 2; Ex. 2, p.3-4. I believe I worked with additional front of house employees in 2021 whose names I do not currently recall.

23. I recall working with an individual named German Giambiaggi, who worked in the back of house at the Restaurant. He is also included in a pay sheet that I received from Mr. Sajid. *See* Ex. 5, p. 2.

I declare under penalty of perjury of the law of the United States that the foregoing is true and correct.

Dated: 10/31/2022

DocuSigned by:
By: 
A74DA1F70DD0483...

Nino Martinenko